ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR08-857

DAVID LEE PATTERSON APPELLANT V. STATE OF ARKANSAS APPELLEE	**Opinion Delivered** FEBRUARY 18, 2009 APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT [NO. 07-3469] HONORABLE JOHN W. LANGSTON, JUDGE AFFIRMED

WAYMOND M. BROWN, Judge

On March 26, 2008, a Pulaski County jury found David Lee Patterson guilty of residential burglary and theft of property, and sentenced him to a thirteen-year term in the Arkansas Department of Correction. Patterson challenges the denial of his motion for directed verdict, arguing that the State failed to present sufficient evidence showing that he was the burglar. We affirm.

Facts

The State presented the following evidence at trial. A burglar broke into Eric Hardin's home on June 7, 2007, by busting into the front door. The front and back doors were locked prior to the burglary. During the burglary, a siren for Hardin's alarm system had been knocked to the floor, and the phone line had been cut. Among the items taken were a gun and a jar of coins. During the investigation, Officer Andrew Thompson of the Pulaski County Sheriff's Office inspected a broken window pane in the kitchen. He concluded that

the window was broken from the inside because there was very little glass inside of the window sill and because the majority of the glass was outside of the home. While inspecting the glass, he discovered fresh fingerprints. Officer Thompson was able to successfully lift four prints, and a fingerprint examiner testified that the prints matched those of Patterson. Hardin did not know Patterson, and there was no reason for Patterson to be at Hardin's residence. The stolen items were never recovered.

At the conclusion of the State's case, Patterson moved for directed verdict, arguing that the State failed to present evidence connecting him to the stolen items. The court denied the motion, and Patterson rested without presenting a case. After closing arguments, Patterson renewed his motion for directed verdict, which was again denied. The jury returned with guilty verdicts on the charges of residential burglary and theft of property. Patterson received a thirteen-year sentence for the burglary charge and a five-year sentence for the theft charge. The court ordered the sentences to run concurrently.

Sufficiency of the Evidence

Before reaching the merits of Patterson's challenge to the sufficiency of the evidence, we must determine whether Patterson's argument is preserved for appellate review. Under Arkansas Rule of Criminal Procedure 33.1(a), a motion for directed verdict must be made at the close of the evidence offered by the prosecution and at the close of all of the evidence. The failure to make the motion in this matter constitutes a waiver of any question pertaining to the sufficiency of the evidence. Ark. R. Crim. P. 33.1(c).

The State contends that Patterson failed to preserve his sufficiency challenge because,

while he made a motion for directed verdict at the close of the State's case, he did not renew that motion until after closing arguments. The State correctly asserts that a directed-verdict motion made after closing arguments is too late. *See Robinson v. State*, 348 Ark. 280, 72 S.W.3d 827 (2002) (holding that a directed-verdict motion renewed after the jury charge is too late). However, when a defendant presents no evidence after a directed-verdict motion is made, further reliance on that motion is not waived. *Chrobak v. State*, 75 Ark. App. 281, 58 S.W.3d 387 (2001). In this case, Patterson moved for directed verdict at the close of the State's case, then closed his own case without presenting evidence. Therefore, the motion at the end of the State's case, by itself, was sufficient to preserve the challenge to the sufficiency of the evidence. Patterson's argument is properly before this court.

When a defendant makes a challenge to sufficiency of the evidence on appeal, the appellate court views the evidence in the light most favorable to the State. *Baughman v. State*, 353 Ark. 1, 110 S.W.3d 740 (2003). The test for determining sufficiency of the evidence is whether the verdict is supported by substantial evidence. *Id.* Substantial evidence is evidence forceful enough to compel a conclusion one way or the other beyond suspicion or conjecture. *Id.* Only evidence supporting the verdict will be considered. *Hicks v. State*, 327 Ark. 652, 941 S.W.2d 387 (1997). We will affirm the conviction if there is substantial evidence to support it. *Id.* Circumstantial evidence provides the basis to support a conviction if it is consistent with the defendant's guilt and inconsistent with any other reasonable conclusion. *Von Holt v. State*, 85 Ark. App. 308, 151 S.W.3d 1 (2004). Whether the evidence does so is a question for the trier of fact. *Id.*

It is essential to every case that the accused be shown as the one who committed the crime; however, that connection can be inferred from all the facts and circumstances of the case. *Williams v. State*, 308 Ark. 620, 825 S.W.2d 826 (1992). Arkansas courts have held that the State puts before the jury substantial evidence when it proves that the defendant's fingerprints were found at the scene of the crime. *Medlock v. State*, 79 Ark. App. 447, 89 S.W.3d 357 (2002); *see also Brown v. State*, 310 Ark. 427, 837 S.W.2d 457 (1992) (affirming conviction when fingerprints were found both on the exterior window glass and inside the structure); *Howard v. State*, 286 Ark. 479, 695 S.W.2d 375 (1985) (affirming conviction when a fingerprint was removed from the exact place where the robber was seen placing his hand as he vaulted into booth); *Ebsen v. State*, 249 Ark. 477, 459 S.W.2d 548 (1970) (affirming conviction when fingerprints were found on both sides of a plate glass window that had been broken in and propped up inside the store); *Phillips v. State*, 88 Ark. App. 17, 194 S.W.3d 222 (2004), *aff'd on other grounds*, 361 Ark. 1, 203 S.W.3d 630 (2005) (affirming conviction when fingerprints were found on the inside of the passenger-side window of a vehicle).

However, Patterson relies on *Standridge v. State*, 310 Ark. 408, 837 S.W.2d 447 (1992), and *Holloway v. State*, 11 Ark. App. 69, 666 S.W.2d 410 (1984), where the State's fingerprint evidence was insufficient to sustain the convictions. In *Standridge*, the appellant was charged with manufacturing marijuana. To connect the appellant to the marijuana, the State introduced evidence that a plastic cup with the appellant's fingerprint was found beside a tent that was six to fifteen feet from the plants. The supreme court reversed, holding that the evidence of the "easily movable plastic cup" was insufficient to conclude that the

appellant was at the crime scene. *Standridge*, 310 Ark. at 410, 837 S.W.2d at 448. In *Holloway*, the appellant was charged with burglary. The fingerprint in that case was found on a piece of broken window glass found on the ground outside of the house and directly under the kitchen window. We held that the fingerprint was insufficient to place the appellant inside of the house. *See also Turner v. State*, 100 Ark. App. 248, ___ S.W.3d ___ (2008) (reversing a conviction when the only evidence to connect the defendant to the stolen truck was two fingerprints found on the exterior of the truck); *Smith v. State*, 34 Ark. App. 150, 806 S.W.2d 391 (1991) (reversing a theft conviction when the only connection between the defendant and the stolen vehicle was evidence that the defendant grabbed the door handle and defendant's prints on the exterior of the vehicle).

We hold that the State presented sufficient evidence to connect Patterson to the burglary. The evidence shows that the burglar gained entry through the front door and that the window pane was broken from the inside. Barring the possibility of Patterson coming along and picking up broken glass from the ground, the only way that appellant's fingerprints could have come in contact with the glass is if he was inside the home. *Standridge* is distinguishable, as the print in that case was found on an easily movable object found near the marijuana plants. *Holloway* is closer, but it is also distinguishable, as there was no other additional evidence in that case to explain how the defendant's prints could have been found on the window. This case would have been very similar to *Phillips* had the burglar in this case left the window intact (or had the appellant in *Phillips* broken the car window). Because of the similarities, we find *Phillips* to be the most persuasive of the aforementioned authorities

and recognize it as the basis for holding that the fingerprints found at the scene are sufficient to place Patterson inside Hardin's residence.

Affirmed.

ROBBINS and MARSHALL, JJ., agree.